

**THE REPUBLIC OF TRINIDAD AND TOBAGO  
IN THE HIGH COURT OF JUSTICE**

**CV 2011-03945**

**BETWEEN**

**CLOTHILDA DINGWALL  
NORMA HOSPEDALES  
CECIL HOSPEDALES  
CHRISTINA HOSPEDALES  
PAULINE HOSPEDALES**

**CLAIMANTS**

**AND**

**CURTIS WILSON**

**DEFENDANT**

*Before the Honourable Mr. Justice Ronnie Boodoosingh*

**Appearances:**

Mr. Samuel Saunders for the Claimants  
The Defendant In Person

Dated: 8 April 2013

**REASONS**

1. An oral judgment was given on 26 November 2012. The Claimants are co-owners of a parcel of land comprising five acres, more or less, at La Brea Trace, Erin Road, Siparia. The Defendant is a co-owner in respect of a one-ninth share in the lands. The Claimants' sister, Rita Lon, was the owner of the Defendant's share and she transferred her share to him by Memorandum of Transfer of 3 July 2008. The Defendant obtained a Certificate of Title in respect of it. The Defendant has constructed a building on the land. That building has been made into apartments and he has rented out certain of these apartments.
  
2. In consequence of this, the first Claimant asserted on her own behalf and on behalf of the other Claimants that they have been dispossessed of the portion of the lands on which the Defendant has erected this building. They say that they are all entitled to a share in the land and the Defendant has gone and occupied, exclusively, this portion of the land by putting up this building and renting out parts of the building. By doing this, he has dispossessed them.
  
3. The Defendant asserted that he did this but that the Claimants and other persons entitled to the possession of the lands were aware of his actions and in fact consented to it. The first Claimant denies that it was with her consent and the Defendant also did not advance any supporting evidence of the consent of other persons in any form of admissible evidence.

4. The essential issue therefore is whether the Claimants are entitled to the same rights to the portion of land as the Defendant.
  
5. Mr Saunders submitted a Court of Appeal authority from St Lucia in the matter of **Ulysses v Estephane, Magisterial Civil Appeal No. 4/1975**. At page 2 of the decision the learned Justice of Appeal St. Bernard stated as follows:

*“Tenants in common have unity of possession and each tenant is as much entitled to possession of any part of the land as the others. Their occupation is undivided and neither party can point to any particular part of the land as his own to the exclusion of the others. It seems to follow therefore that one co-owner cannot rent a particular part of the land to the exclusion of the others without their consent, but, he may, in my view, transfer his rights in the common property to another and the transferee stands in his shoes and may do all such things on the land as the co-owner is able to do. This issue was not raised in lower Court but the facts are that the respondent was working the land as agricultural land for eight years and the appellant stated he had been on a portion of the land "all his life." It is not unreasonable to find that in the present case Luciana Cherie who placed the respondent on the land, whether as tenant or licensee, did so with the consent of the appellant.”*

6. The learned Justice of Appeal also quoted from *Clerk & Lindsell on Torts, 13<sup>th</sup> Edition*, at paragraph 1328, in which the common law position in respect of an action of trespass by one co-owner against the other is stated:

*"One co-owner of land can only bring an action of trespass against the other if he has been actually ousted or dispossessed of the land. Each co-owner is entitled to possession of the whole land, so that if one turns the other off the land or a part of it, it is a trespass. If the common property or part of it is destroyed, there is an ouster. So, trespass lies by one co-owner against another who digs and carries away the soil. It is not trespass, however, if one co-owner uses the land in the ordinary and natural way, as by cutting grass and making it into hay, or working a coal mine."*

7. So there were two critical issues for decision. These were whether the Defendant's occupation of the land by the construction of the building was with the consent of the co-owners, and secondly, whether he has by his occupation dispossessed the other parties.
8. In respect of the second issue, which would be dealt with first, the construction of a permanent structure on the land such as a house or a building being tenanted out, is in the court's view dispossession of the other co-owners. The Defendant has been, from his evidence and from the evidence of the first Claimant, exercising exclusive possession and control over this portion, even though he says that the others are entitled to do so. In

respect of that portion of the five acre parcel, I found that the Defendant has exercised exclusive possession.

9. Between the first Claimant and the Defendant, I preferred the evidence of the First Claimant on the issue as to whether permission was obtained from the other co-owners. The first Claimant produced a letter which was sent to the Defendant complaining about his occupation of the land exclusively. The Defendant did not respond to this letter.

10. I also accepted her evidence that she did not give him consent to do so. In fact she has opposed his taking control of that portion of the land exclusively.

11. The question therefore is what is the appropriate remedy? Even a co-owner who exercises exclusive control over premises would be liable in trespass because he has in effect dispossessed the other owners. As Mr. Saunders has indicated, however, it is only nominal damages which would be applicable. In respect of the trespass to land, therefore, I would award nominal damages in the sum of \$1,000.00.

12. The Defendant has put up a building and there is another building which has been started but which is not yet occupied and is incomplete. All of the parties are entitled to possession of that portion of the land. The question then is what is the appropriate order?

In my view the appropriate order would be to order that the Claimants are entitled to possession of the lands of which the Defendant has dispossessed them.

13. The issue as to what should become of the structure on the lands would be a matter for the parties in my respectful view to work out. What I would be prepared to do is to make an order that the Defendant do demolish such structures which have been erected on the land. But I would suspend this order for a period of time of six months, that is to say, until the end of May 2013. This would give the parties an opportunity to discuss among themselves and work out what arrangement can be made in respect of the buildings.

14. It may well be that the parties may decide that the building should not be demolished but that they should all share in the rental in respect of what is being obtained for the use of the premises. If there is no agreement, the order is that by the 31 May 2013, the Defendant must demolish the buildings.

15. In respect of costs the Defendant must pay the Claimants their costs. With a \$50,000.00 claim, costs would be in the sum of \$14,000.00.

**Ronnie Boodoosingh**

**Judge**